

# Amendment of the Auckland Transport Election Signs Bylaw 2013

## Recommendations

It is recommended that the board:

- i. notes and considers the full written submissions contained in Attachment 3;
- ii. accepts submissions received after 4pm on Tuesday, 8 August 2013;
- iii. amend the Auckland Transport Election Signs Bylaw 2013 with effect from 12 August 2013 by making the Auckland Transport Election Signs Amendment Bylaw No 1 of 2013 that :
  - a. amends the explanatory note on the title page;
  - b. revokes clause 7(1)(r) of the Auckland Council Election Signs Bylaw 2013,
  - c. inserts in clauses 7(1)(k) and (l) exclusions to the prohibition of the illumination of election signs on commercial billboards.
- iv. revokes the control made by its Transport Control Committee on 17 July 2013 entitled "Approving alternate font sizes for particular sites" (Report ID11286);
- v. thank the submitters for their submissions on the proposed amendment bylaw.

## Executive summary

On 30 May 2013 Auckland Transport, as road controlling authority for Auckland, made the Auckland Transport Election Signs Bylaw 2013 under section 22AB(1) of the Land Transport Act 1998. Auckland Transport and Auckland Council received a number of complaints relating to the controls within the bylaw prescribing the size of election sign lettering and the restrictions on the illumination of election signs on commercial billboards.

To ensure that the bylaw is fit for purpose and does not create unenforceable and impracticable rules, Auckland Transport has proposed an amendment bylaw to resolve those issues. The proposed amendment removes font size controls and clarifies that election signs on commercial billboards are excluded from the restriction of the illumination of election signs.

Public consultation was undertaken with stakeholders between 6 and 9 August 2013 and Auckland Transport received nineteen submissions on the proposal. One late submission was received. Officers have reviewed the submissions and recommend that the proposal, as notified be approved without changes, with effect from 13 August 2013.

## Alignment with strategy

Auckland Transport has to give effect to the strategic direction in the Auckland Plan as well as any other strategic documents such as the Unitary Plan. The Auckland Plan sets out the strategic direction for Auckland to become the world's most liveable city for the next 30 years by identifying the targets and priorities that need enhancing, whilst the Unitary Plan will combine both regional and district planning functions to give effect to the Auckland Plan, using rules and incentives to achieve high quality outcomes.

The proposed amendment bylaw addresses a number of narrowly focused problems identified after the Auckland Transport Election Signs bylaw 2013 was made. The amendments do not change the outcomes sought by the Auckland Plan and the draft Unitary Plan. The amendment bylaw continues to be consistent with the Auckland Plan's strategic direction 12: *plan, deliver and maintain quality infrastructure to make Auckland liveable and resilient*, through the control on the location of the election signs.

## Legislation applying to elections signs

The display of election signs is a significant part of campaigning for elections and by-elections. Election signs are subject to the provisions of the Electoral Act 1993 and the Electoral (Advertisements of a Specified Kind) Regulations 2005 as well as bylaws made under the Land Transport Act 1998 (LTA98). As a road controlling authority, Auckland Transport is authorised to make a bylaw regulating the display of signs on roads or visible from roads and the bylaw is consistent with the purpose of Auckland Transport in section 39 of Local Government (Auckland Council) Act 2009 to contribute to an effective and efficient transport system to support Auckland's social, economic, environmental and cultural well-being.

Consideration was given as to whether the amendment bylaw would give rise to any implications in respect of this Act and in particular, whether removal of the controls place unreasonable limits on the right to freedom of expression. The amendment bylaw is considered reasonable as it removes any font size restrictions, which is fair to all candidates, and will continue to minimise adverse impacts on road safety and amenity values and ensure the mandate and purpose of Auckland Transport are appropriately delivered.

## Background

On 30 May 2013, Auckland Transport, as road controlling authority for Auckland, made the Auckland Transport Election Signs Bylaw 2013 under section 22AB(1) of the Land Transport Act 1998. Notice had been given of the making of the bylaw in accordance with section 22AD of the Land Transport Act 1998.

Numerous complaints have been received that the newly imposed requirements under the Auckland Transport Election Signs Bylaw 2013 are confusing, onerous, impractical and difficult to enforce. Subsequently on the 17 July 2013 the Transport Control Committee of Auckland Transport resolved to make a control under clause 8(1) of the bylaw to clarify the size of lettering in clause 7(1)(r) of the bylaw by approving varying sizes of lettering that may be used for arterial and non-arterial roads in the Auckland transport system. This measure has not had the desired effect of resolving the unnecessary and onerous requirements.

Pursuant to clause 7(1)(c) of the bylaw, election signs larger than three metres<sup>2</sup> may be placed on commercial billboards. A commercial billboard is defined in the bylaw as a permanently erected structure available for hire or reward that is designed and used for the display of advertisements and includes a large passenger vehicle so used. The illumination of commercial billboards is a normal part of commercial use and is regulated in Auckland through bylaws or district plans. Clauses 7(1)(k) and (l) prohibit the illumination of election signs, without exemption of election signs displayed on commercial billboards. This may lead to confusion and inadvertent breaching of the bylaw.

The explanatory note on the title page of the bylaw is misleading as it incorrectly states that the purpose of the bylaw is to make bylaws.

Due to the urgency of the issues, Auckland Transport commenced a process to provide clarity and ensure that candidates in the forthcoming election are able to display election signs in an orderly manner without imposing unnecessarily onerous restrictions. Notice was given on Tuesday, 6 August 2013 to all persons who made submissions during the making of the Auckland Transport Election Signs Bylaw 2013, to all candidates in the forthcoming election and to all local boards of a proposal to amend the bylaw to address the issues of concern. Public notice was given in the New Zealand Herald dated 6 August 2013 of the proposed amendments and the public was invited to make submissions. The total number of submissions received was nineteen. One late submission was received. These submissions are assessed under the relevant proposal.

## Strategic Context

### Scope of the Bylaw

The Auckland Transport Election Signs Bylaw 2013 covers local government elections (including licensing trusts and district health boards) and parliamentary elections. The bylaw will not cover elections for school boards or tertiary institutions. Signs for these elections will continue to be subject to the current legacy signs bylaws and district plan rules and signs for these elections will not be able to utilise the proposed sites resolved under the proposed bylaw.

The Auckland Transport Election Signs Amendment Bylaw No 1 of 2013 does not affect the scope of the Auckland Transport Election Signs Bylaw 2013 but removes onerous restrictions on the size of the lettering permitted on election signs and clarifies that election signs on commercial billboards may be illuminated.

## Submission analysis

### Submission Topic 1 – Revocation of the election sign lettering controls.

#### Proposal as publically notified

Auckland Transport notified a proposal to amend the bylaw to remove the lettering size restrictions in clause 7(1)(r) and revoking the subsequent Auckland Transport Controls Committee additional controls to remove unnecessarily restrictive and onerous requirements.

#### Matters raised in submissions

There were twelve submissions, including the late submission, (numbers 1, 2, 5, 6, 8, 9, 10, 11, 14, 15, 17, 18 and 20) in complete support of the proposal as notified.

Seven submissions (2, 4, 7, 12, 13, 16 and 19) disagreed with the proposal. Some submitters consider that the removal of the controls will provide signage designers with too much leniency on the size of the messages placed on the sign, and the possibility that the message on the sign could become visual clutter, distracting motorists and may be a potential safety risk. A number of submitters considered that those who have made signs that met the requirements of the bylaw will be disadvantaged by the removal of the controls. Some submitters object to the timing of the amendment shortly before the regulated period commences when election signs may be displayed. A submitter is of the view that the placement of election signs close to their motel business would have a detrimental affect on their business as they believe there is potential for election signs to mask their business signage.

### **Officer's comment**

In response to the submissions in opposition, the proposed removal of the lettering controls will not have a significant impact on the visual amenity on the sign. The election sign still has to be located on the public sites approved by Auckland Transport. The size of the signs remains restricted to three metres<sup>2</sup>. The signs still have to comply with road traffic standards, and the content has to comply with legislative requirements. The effect of the amendment is to allow smaller font size to be used where appropriate. It must be noted that the requirement is new to Auckland as similar requirements were not in the legacy bylaws. As far as can be determined, the lack of lettering requirements did not cause any safety issues for vehicular traffic. Officers consider that the restriction on letter size applies to election signs on roads under the control of the New Zealand Transport Agency under the Electoral (Advertisements of a Specified Kind) Regulations 2005. Accordingly, candidates who have made their signs under the current bylaw will benefit from being able to use their signs adjacent to NZTA roads.

### **Submission Topic 2 – The illumination of commercial billboards**

#### **Proposal as publically notified**

The illumination of commercial billboards is a normal part of commercial use and is regulated in Auckland through bylaws or district plans. The current bylaw prohibits the illumination of election signs. The proposed amendment will allow the illumination of commercial billboards that display election material.

#### **Matters raised in submissions**

There were two submissions (numbers 13 and 19) that referred to this proposal. They were in support of the proposal as notified. No submissions were made against the proposal as notified.

#### **Officer's comment**

Officers have no comment.

### **Submission Topic 3 – The explanatory note on the purpose of the bylaw**

#### **Proposal as publically notified**

The explanatory note on the title page of the bylaw is misleading as it incorrectly states that the purpose of the bylaw is to make bylaws. This should be clarified to allow for Auckland Transport to make bylaws about provide for the display of election signs on sites that are on or visible from roads that are under the care, control or management of Auckland Transport. As the title page is not part of the bylaw, this may be amended by ordinary resolution.

#### **Matters raised in submissions**

None of the submissions discussed this topic and nobody opposed the amendment.

#### **Officer's comment**

Officers have no comment.

## **Submission Topic 4 – Additional comments received**

Five submissions (2, 9, 12, 16 and 19) objected to short period of consultation. One of these submitters also objected to not being provided an opportunity to make a verbal submission on the proposal.

### **Officer's comment**

Officers regard the period of three days as acceptable due to the limited time available before election signs may be displayed for the impending local government elections. In addition, Auckland Transport has recently concluded the consultation process on the making of the bylaw, and the proposed amendments are very minor. They do not impose additional requirements on any person. The proposed change in relation to letter size is a relaxation of the existing bylaw requirement, while the other proposed change (in relation to illumination of billboards) merely clarifies the existing bylaw.

## **Financial**

No direct financial impact is identified for Auckland Transport to make the bylaw. The administration and enforcement of the bylaw will be undertaken by Licensing and Compliance at Auckland Council in accordance with their current delegation.

## **Stakeholder engagement**

To amend the bylaw, Auckland Transport has to meet the requirements of section 22AD of the Land Transport Act 2013. Auckland Transport notified in writing all the persons who had made submissions on the Auckland Transport Election Signs Bylaw 2013 in April 2013. It also notified the candidates in the forthcoming election, the chairs of the local boards, all the elected members and gave public notice in the New Zealand Herald of 6 August 2013 of its intention to amend the bylaw. All notified persons were invited to provide submissions from 6 to 8 August 2013 and nineteen submissions were received. One late submission was received. Notice of the amendment was also given to the New Zealand Transport Agency.

## **Customer Impact**

The revocation of the letter size requirement will remove unnecessarily onerous restrictions that enable candidates to more easily provide election signs. However, it is not proposed to change the size of the signs and the location of signs and other safety requirements.

## **Next Steps**

The Minister of Transport will be notified in accordance with section 22AB(4) of the Land Transport Act 1998 within one week of the bylaw being made. Public notice confirming the date the bylaw comes into effect will be made as soon as reasonably practicable after the bylaw is made in accordance with section 22AE of the Land Transport Act 1998. Subject to the approval of the board, it is recommended that the bylaw will come into effect on 12 August 2013.

Licensing and Compliance Services at the council will be responsible for administering and enforcing the bylaw in accordance with their current delegation.

## Attachments

Number	Description
1	Auckland Transport Election Signs Amendment Bylaw No 1 of 2013
2	Auckland Transport Election Signs Bylaw 2013, as amended
3	Statement of proposal
4	Full written submissions

## Document Ownership

<b>Prepared by</b>	<b>Mario Zambuto</b> Manager Legal Services	
<b>Recommended by</b>	<b>Mario Zambuto</b> Manager Legal Services	
<b>Approved Submission</b>	<b>for</b> <b>David Warburton</b> Chief Executive	